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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF TERRA FIRMA INVESTMENTS
(GP) LIMITED (for and on behalf of
The six limited partnerships
Constituting the Terra Firma
Capital Partners II Fund), and
TERRA FIRMA INVESTMENTS (GP) 3
LIMITED (for and on behalf of
Terra Firma Capital Partners
III, L.P.),

Plaintiffs,

09:04:05

vs.

Index No.
09-CIV-10459

CITIGROUP INC., CITIBANK
N.A., CITIGROUP GLOBAL MARKETS
LIMITED and CITIGROUP GLOBAL
MARKETS, INC.,

Defendants.

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July 21, 2010
9:00 a.m.

Videotaped Deposition of
DARRELL L. WILLIAMS, Ph.D., taken by Defendants,
pursuant to Notice, at the offices of Paul,
Weiss, Rifkind, Wharton & Garrison LLP, 1285
Avenue of the Americas, New York, New York,
before TAMMEY M. PASTOR, a Registered
Professional Reporter, Certified LiveNote
Reporter and Notary Public within and for the
State of New York.

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09:48:43 2 it is one entity.

09:48:44 3 Q. Do you have any understanding of
09:48:47 4 the nature of the affiliate relationships
09:48:51 5 between Terra Firma, between the Terra Firma
09:48:55 6 entities and the EMI company?

09:49:08 7 A. Could you repeat that, please.

09:49:10 8 (The pending question was read as
09:49:10 9 follows:

09:48:45 10 "Question: Do you have any
09:48:45 11 understanding of the nature of the
09:48:48 12 affiliate relationships between Terra
09:48:53 13 Firma, between the Terra Firma entities
09:48:55 14 and the EMI company?")

09:49:11 15 A. I don't understand what you mean
09:49:12 16 by affiliate relationships.

09:49:13 17 Q. Do you understand that there are
09:49:19 18 several affiliates of what you've described as
09:49:21 19 Terra Firma?

09:49:24 20 A. I really have no understanding of
09:49:25 21 the legal structure of the firm. It wasn't
09:49:28 22 necessary for purposes of my analysis.

09:49:30 23 Q. Do you know one way or the other?

09:49:31 24 A. I mean I have heard that there is
09:49:35 25 more than one entity. But for the purposes of

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09:49:38 2 my analysis I couldn't name them. But I don't
09:49:40 3 he know specifically what their relationship is
09:49:41 4 beyond that there is, you know, an Advisory
09:49:47 5 Committee and someone who is executing in
09:49:49 6 general. But those legal distinctions are
09:49:51 7 really not important for the economic analysis.

09:49:56 8 Q. Do you think that those legal
09:49:58 9 distinctions are important in any way for a
09:50:00 10 damages analysis?

09:50:00 11 MR. GRAVANTE: Objection to the
09:50:03 12 form.

09:50:03 13 A. I'm not here as a damages expert.
09:50:06 14 So, I really have no opinion one way or the
09:50:08 15 other with respect to damages.

09:50:11 16 Q. Do you realize you offer an
09:50:12 17 opinion on damages in your report?

09:50:14 18 MR. GRAVANTE: Objection to the
09:50:15 19 form.

09:50:15 20 A. I do not offer an opinion on
09:50:17 21 damages in my report. I certainly cite to what
09:50:23 22 others have opined on with respect to damages.
09:50:26 23 But I am not rendering a separate opinion, nor
09:50:28 24 do I in my report on damages.

09:50:34 25 Q. So, is it fair to say then with

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09:50:35 2 your testimony that you are not offering a
09:50:40 3 damages opinion in this case?

09:50:42 4 MR. GRAVANTE: Objection to the
09:50:44 5 form.

09:50:44 6 A. I am not -- beyond just stating
09:50:47 7 what I did in the report which was really to
09:50:49 8 refer to what others have done, I am not
09:50:51 9 independently in any way rendering a damage
09:50:55 10 opinion in this case.

09:50:56 11 Q. Why did you, if you're not
09:50:58 12 rendering a damages opinion in this case, why
09:51:00 13 did you refer to the damages opinions of one or
09:51:08 14 more other experts?

09:51:09 15 MR. GRAVANTE: Objection to the
09:51:10 16 form.

09:51:12 17 A. It's not unusual for me to
09:51:14 18 reference work by others in any of my reports.
09:51:19 19 You'll see I reference a number of studies in
09:51:21 20 my report. I referenced other experts in this
09:51:27 21 reporting and other reports.

09:51:29 22 So referencing outside studies is
09:51:31 23 typical. That's all I have done here is
09:51:33 24 reference it. I am not rendering any
09:51:35 25 independent opinion.

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09:51:36 2 Q. Thank you. Just so I'm clear,
09:51:44 3 what is your assignment, Dr. Williams, as a
09:51:49 4 retained expert for the Plaintiffs in this
09:51:51 5 case?

09:51:51 6 A. My role generally, which is
09:52:05 7 described in paragraph 3 of my report, again
09:52:13 8 generally I was retained to assess the economic
09:52:16 9 incentives for the Plaintiffs with respect to
09:52:21 10 the alleged fraud, what consequences those
09:52:23 11 incentives may have for its bidding behavior.

09:52:26 12 And then also to assess the
09:52:30 13 credit market conditions and what implications
09:52:32 14 that that might have for the eventual outcome
09:52:34 15 of the bidding process.

09:52:38 16 Q. Do you understand whether or not
09:52:41 17 Plaintiffs have retained other experts in this
09:52:44 18 case?

09:52:44 19 A. I generally understand there are
09:52:47 20 other experts in this case, yes.

09:52:49 21 Q. Do you know who they are?

09:52:50 22 A. I do know that Professor Teece
09:52:54 23 has been retained in this case. And I do know
09:52:56 24 that Ms. DeMario has been retained in this case
09:53:01 25 and there may be others.

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10:17:18 2 Q. Did you draw any conclusions from
10:17:20 3 the data that they gathered on that topic?

10:17:22 4 A. I certainly learned a fact. The
10:17:32 5 fact is that there was -- as I suspected and
10:17:36 6 even the data in his report shows there was a
10:17:38 7 significant decline in the, both the number and
10:17:44 8 the dollar value of LBO activity in the summer
10:17:52 9 of '08.

10:17:57 10 Q. In the summer of '08 or '07?

10:18:00 11 A. '07. Sorry.

10:18:02 12 Q. That's fine. And I don't recall
10:18:03 13 specifically the time period for which you saw
10:18:09 14 significant decline in number and dollar value
10:18:14 15 in LBOs?

10:18:15 16 A. Well I looked at it relative
10:18:18 17 to -- I looked at it relative to the May 21st
10:18:21 18 bid date. And so compared to the period before
10:18:23 19 that bid date there was a significant decline
10:18:26 20 in both the number and value for the period
10:18:30 21 before the bid date compared to the period
10:18:33 22 after the bid date.

10:18:34 23 Q. Do you know how far back in time
10:18:36 24 before the May 21, 2007 bid date you had staff
10:18:41 25 look?

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10:18:46 2 A. I don't recall specifically how
10:18:47 3 far back they gathered the data.

10:18:51 4 MR. CARNEY: Why don't we take a
10:18:53 5 break, Dr. Williams, we have to change a
10:18:55 6 tape anyway.

10:18:56 7 VIDEOGRAPHER: Here now marks the
10:18:57 8 end of tape 2 of the deposition of
10:18:59 9 Dr. Darrell L. Williams. The time is
10:19:02 10 10:18 a.m. We are now off the record.

10:19:04 11 (Recess taken.)

10:27:59 12 VIDEOGRAPHER: Here now marks the
10:29:24 13 beginning of tape 2 of the deposition of
10:29:26 14 Dr. Darrel L Williams. The time is 10:28
10:29:30 15 a.m. We are back on the record.

10:29:32 16 EXAMINATION CONDUCTED BY MR. CARNEY:

10:29:32 17 Q. Welcome back, Dr. Williams. Can
10:29:34 18 you turn to your report, please, paragraph 3.
10:29:47 19 You say in your first sentence there "I have
10:29:50 20 been retained by Plaintiffs to analyze the
10:29:52 21 economic incentives facing Terra Firma before
10:29:54 22 it committed its final bid absent the
10:29:57 23 fraudulent conduct alleged in the Complaint."
10:30:00 24 Can you tell me what the economic
10:30:02 25 incentives are that you're referring to in that

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10:30:04 2 sentence?

10:30:13 3 A. I am simply referring to the
10:30:14 4 gains associated with various options that
10:30:17 5 would be facing the Plaintiff at that point in
10:30:19 6 time.

10:30:23 7 Q. And what are those gains as you
10:30:30 8 identify them?

10:30:36 9 A. Well I think a key component of
10:30:39 10 looking at the economic incentives is what
10:30:42 11 bargaining power, what bargaining power would
10:30:45 12 the Plaintiff have under different scenarios,
10:30:48 13 what the stock price would be at the time of
10:30:51 14 any alleged bidding is expected to be.

10:30:57 15 How the marketing power of the
10:31:03 16 target might change over time. Those are some
10:31:11 17 of the factors.

10:31:11 18 Q. Any others?

10:31:14 19 A. Those are key ones, as I think
10:31:16 20 about it now. I may think of others later.

10:31:24 21 Q. Can you describe for me a little
10:31:27 22 more what you mean when you reference
10:31:30 23 bargaining power, how is the bargaining power
10:31:33 24 of either Terra Firma or EMI an economic
10:31:39 25 incentive?

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10:31:47 2 A. Well you have to start with the
10:31:48 3 basic premise that the purchaser wants to pay
10:31:52 4 the lowest possible price. And so when you
10:31:57 5 start with that basic -- that basic goal, then
10:32:02 6 the bargaining power at any particular point in
10:32:05 7 time is relevant to their ability to get a
10:32:08 8 lower price.

10:32:08 9 Q. In that same sentence in
10:32:16 10 paragraph 3 you reference the fraudulent
10:32:19 11 conduct alleged in the Complaint, what is your
10:32:21 12 understanding of what the fraudulent conduct
10:32:22 13 is?

10:32:26 14 A. My general understanding of the
10:32:28 15 fraudulent conduct, at least as it directly
10:32:31 16 relates to what I'm doing is the allegation
10:32:36 17 that Terra Firma had been given incorrect
10:32:41 18 information with regard to the competitive
10:32:52 19 bidding that was likely to occur as of May 21,
10:32:55 20 whether or not Cerberus would be bidding on May
10:32:57 21 21 and that that information was relevant to
10:33:02 22 its decision-making.

10:33:09 23 Q. Then in paragraph 6 you provide
10:33:11 24 your summary of opinions; correct?

10:33:13 25 A. That's correct.

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11:11:43 2 considerations and there may be others.

11:11:44 3 Q. When you say those are
11:11:45 4 considerations, are all of the things you just
11:11:51 5 mentioned economic incentives facing a
11:11:58 6 prospective bidder?

11:12:00 7 A. I'm saying that those things
11:12:03 8 impact the economic incentives facing a
11:12:06 9 prospective bidder. And therefore their
11:12:09 10 assessment of which choices might be best in
11:12:14 11 their interest.

11:12:54 12 Q. Turn to paragraph 48 of your
11:12:55 13 report. You say here "Therefore, on the basis
11:13:02 14 of my analysis, I conclude that Terra Firma
11:13:04 15 would have had an economic incentive to delay
11:13:08 16 its bid for EMI had it been informed about its
11:13:12 17 sole bidder status."

11:13:16 18 Do you see that?

11:13:17 19 A. I do.

11:13:19 20 Q. Even if you were right about
11:13:21 21 that, Dr. Williams, does this conclusion mean
11:13:24 22 that Terra Firma would have acted any
11:13:27 23 differently in the but for world?

11:13:32 24 MR. GRAVANTE: Objection to the
11:13:37 25 form.

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11:13:37 2 A. I believe that it would. I mean
11:13:41 3 the basic role that I have in this matter is to
11:13:48 4 look at what the options are available to the
11:13:51 5 bidder in the but for world. And, again, based
11:13:57 6 on the premise that bidders want to get the
11:14:05 7 lowest possible price, then I certainly think
11:14:11 8 having an economic incentive, that the economic
11:14:13 9 incentives of an expectation that you can get
11:14:18 10 expected lower price in the future could change
11:14:20 11 behavior. Yes.

11:14:22 12 Q. Are there other economic
11:14:25 13 incentives that could impact the decision of
11:14:26 14 Terra Firma to bid?

11:14:31 15 A. There may be other economic
11:14:34 16 incentives in general, but, again, my
11:14:35 17 conclusion, taking into consideration the
11:14:41 18 economic factors that are impacting Terra Firma
11:14:44 19 is that in the but for world there was an
11:14:49 20 incentive to delay.

11:14:50 21 Q. Would you agree with me that
11:14:52 22 Terra Firma was facing economic incentives that
11:14:56 23 weighed in favor of making a bid?

11:15:02 24 A. In terms of assessing the likely
11:15:06 25 impact on behavior, as an economist what you

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11:15:13 2 want to look at is what the net effect is.

11:15:15 3 There is certainly a range of
11:15:20 4 considerations which I've taken into account,
11:15:22 5 but my conclusion is that the net impact is
11:15:25 6 that there was an expected gain from delaying.

11:15:32 7 Q. As part of your analysis did you
11:15:33 8 take into consideration whether or not Terra
11:15:41 9 Firma considered that there would be other
11:15:45 10 competing bids made after the termination date?

11:15:54 11 A. I did take that into account. In
11:15:57 12 fact, I mean that is sort of their key
11:16:00 13 allegation here. The key issue is how much
11:16:05 14 competition within the bidding process did
11:16:08 15 Terra Firma face.

11:16:10 16 And according to the allegations
11:16:12 17 in this case it was misinformed about the
11:16:14 18 extent of that competition, which therefore
11:16:16 19 induced a certain behavior in the actual world
11:16:19 20 that had that information been -- that in the
11:16:24 21 but for world it would have known what the
11:16:26 22 actual competitive position was in my opinion
11:16:28 23 would have induced a different outcome.

11:16:30 24 Q. If Terra Firma believed that a
11:16:33 25 party other than Cerberus was a prospective

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11:16:36 2 bidder for EMI, would it have had an economic
11:16:47 3 incentive to make the bid in response to that
11:16:49 4 perceived competition?

11:16:53 5 A. In conducting my analysis I took
11:17:01 6 into consideration what might be called
11:17:06 7 competitive pressure. And the general
11:17:14 8 conclusion is that there were various rumors
11:17:20 9 floating over a relatively long period of time
11:17:24 10 about various potential bidders.

11:17:31 11 And those rumors continued in
11:17:33 12 Dr. Fischel's language, both before, during and
11:17:39 13 after. So there was really no change in the
11:17:41 14 competitive pressure per se.

11:17:42 15 What would have changed in the
11:17:44 16 but for world would have been the opportunity
11:17:49 17 to unilaterally terminate the auction with its
11:17:57 18 expected consequences on stock price and put it
11:18:05 19 in a different bargaining position in a post
11:18:07 20 May 21 world versus the pre May 21 world.

11:18:14 21 Q. We've been talking about the but
11:18:16 22 for world and perhaps we should just define it
11:18:18 23 for the jury. How would you define the but for
11:18:21 24 world?

11:18:22 25 A. I generally I'm looking at two

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11:18:26 2 scenarios. There might be multiple scenarios
11:18:28 3 under those, but I'm looking at the world in
11:18:31 4 which, the actual world in which the alleged
11:18:34 5 fraud occurred. And then what I'm describing
11:18:37 6 as the but for world would be those conditions
11:18:39 7 that would existed in the absence of the
11:18:43 8 alleged fraud.

11:18:49 9 Q. When you are positing a but for
11:18:51 10 world and looking at conditions that would
11:18:53 11 exist in a world absent the fraud, are part of
11:18:57 12 the conditions that you posit those that
11:19:01 13 respect the actions of other market
11:19:04 14 participants?

11:19:06 15 A. I think I already testified that
11:19:19 16 I take into account competitive pressure and
11:19:23 17 rumors of other bids and so on. So if that's
11:19:25 18 what you mean, that is being taken into
11:19:26 19 account.

11:19:27 20 Q. As an economist, Dr. Williams,
11:19:31 21 you have in your work from time to time posited
11:19:34 22 but for worlds in your various analyses; is
11:19:37 23 that fair?

11:19:38 24 A. It's certainly been the case in
11:19:43 25 other reports that using this construct of the

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11:34:25 2 target company at the lowest possible price the
11:34:27 3 only economic incentives that a bidding company
11:34:30 4 faces?

11:34:33 5 MR. GRAVANTE: Objection to the
11:34:37 6 form.

11:34:37 7 A. The word, when you say the only
11:34:39 8 economic incentive, I think that's a little
11:34:43 9 confusing the way you say that.

11:34:44 10 The goal of purchasing an asset
11:34:54 11 at the lowest possible price is not an -- I
11:34:59 12 wouldn't even call it an economic incentive,
11:35:01 13 it's the goal. It is what they are trying to
11:35:04 14 do. It is wealth maximizing behavior, value
11:35:08 15 maximizing behavior.

11:35:09 16 So there are lots of economic
11:35:14 17 incentives that relate to that goal. But the
11:35:17 18 goal is to get the asset at the lowest possible
11:35:22 19 price.

11:35:22 20 Q. And you would agree therefore in
11:35:24 21 fact there are a lot of economic incentives
11:35:28 22 that bear upon a decision by a bidder to bid
11:35:32 23 for a target company; correct?

11:35:37 24 MR. GRAVANTE: Objection to the
11:35:48 25 form.

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11:35:48 2 A. It's a little unclear the way
11:35:50 3 you're asking the question when you say there
11:35:51 4 are a lot of economic incentives. There are a
11:35:54 5 lot of factors that might be considered. Those
11:35:58 6 factors impact the economic incentives.

11:36:00 7 And the purpose of my analysis is
11:36:03 8 to look at what the net effect of those factors
11:36:09 9 are in order to ascertain what the incentive
11:36:13 10 might be. So I think it is just a terminology
11:36:19 11 thing. There are factors be considered. We
11:36:21 12 talked about some of them.

11:36:22 13 Then those factors impact what
11:36:26 14 the economic incentive is.

11:36:27 15 Q. So, it's fair to say that your
11:36:31 16 opinion is that on a net basis, balancing all
11:36:38 17 these factors, the economic incentives facing
11:36:41 18 Terra Firma would have weighed in favor of not
11:36:46 19 making a bid for EMI?

11:36:48 20 MR. GRAVANTE: Objection to the
11:36:49 21 form.

11:36:49 22 Q. Correct?

11:37:03 23 A. Please.

11:37:04 24 (The pending question was read as
11:37:04 25 follows:

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11:36:27 2 "Question: So, it's fair to say
11:36:30 3 that your opinion is that on a net basis,
11:36:38 4 balancing all these factors, the economic
11:36:40 5 incentives facing Terra Firma would have
11:36:44 6 weighed in favor of not making a bid for
11:36:47 7 EMI?")

11:37:04 8 A. I think that's not exactly
11:37:11 9 accurate because it's not a balancing -- it's
11:37:15 10 not a balancing of the leveling of all those
11:37:19 11 factors. It is looking at what factors change
11:37:22 12 in the but for world.

11:37:22 13 And the change -- it's my opinion
11:37:25 14 based on the is analysis that I've done in this
11:37:27 15 report that in the but for world focusing on
11:37:35 16 what changes in the but for world and what
11:37:36 17 impact those changes have on the economic
11:37:43 18 incentives, that the net effect of that change
11:37:44 19 is that there is an expected gain from
11:37:49 20 delaying. And therefore that's where the
11:37:51 21 economic incentive to delay comes from.

11:37:53 22 Q. As a result of your analysis, is
11:37:55 23 it your opinion, Dr. Williams, that in the but
11:37:57 24 for world Terra Firma would not have made a bid
11:38:02 25 for EMI?

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11:38:14 2 (The pending question was read as
11:38:14 3 follows:

11:37:53 4 "Question: As a result of your
11:37:54 5 analysis, is it your opinion,
11:37:56 6 Dr. Williams, that in the but for world
11:38:01 7 Terra Firma would not have made a bid for
11:38:03 8 EMI?")

11:38:15 9 A. My opinion, as I stated in my
11:38:22 10 report is that the main opinions are, number
11:38:25 11 one, that based on the analysis that I've done
11:38:27 12 in the report and much of which we've discussed
11:38:29 13 here, is that Terra Firma had an incentive,
11:38:35 14 economic incentive to delay.

11:38:38 15 And based on the expected time of
11:38:43 16 that delay, that Terra Firma would have been in
11:38:49 17 a position to finance -- would have been in a
11:38:53 18 position where it would have been adversely
11:38:55 19 impacted by the credit conditions that
11:38:57 20 prevailed in the summer of 2007.

11:39:00 21 And in that scenario, it would be
11:39:06 22 very unlikely that that could get financing
11:39:08 23 terms that were similar to the terms that they
11:39:12 24 had if they could get financing terms at all in
11:39:14 25 the but for world.

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11:43:00 2 economic incentive to delay. Then based on
11:43:03 3 empirical evidence of what the timing is
11:43:05 4 between, the timing of delays are, the
11:43:09 5 subsequent bids would be, that they would be in
11:43:12 6 a position where they would be impacted by the
11:43:14 7 credit crisis. And therefore, less likely to
11:43:21 8 receive financing in that situation, in that
11:43:25 9 but for world on the same terms, or at all, if
11:43:29 10 at all.

11:43:30 11 Q. So your opinion, is it not,
11:43:33 12 Dr. Williams, is that in the but for world,
11:43:37 13 Terra Firma acted differently than it did in
11:43:40 14 the actual world; isn't that true?

11:43:47 15 MR. GRAVANTE: Objection to the
11:43:47 16 form.

11:43:58 17 A. The purpose of the analysis in
11:44:01 18 this case and economic analysis of but for
11:44:06 19 world in any matter is to ascertain what would
11:44:13 20 likely have happened but for the alleged
11:44:17 21 conduct.

11:44:18 22 And the reason why you have an
11:44:22 23 expert to do this is that we don't have the
11:44:24 24 benefit of observing what would have happened
11:44:28 25 absent the alleged conduct because in fact the

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11:44:32 2 conduct occurred.

11:44:33 3 So we can't see what would have
11:44:35 4 happened without the fraud, because the fraud,
11:44:37 5 the alleged fraud did occur. So, the purpose
11:44:40 6 of the but for analysis, not just in this case,
11:44:44 7 not just what I've done, but generally in all
11:44:49 8 cases is to ascertain what would have likely
11:44:51 9 happened which may or may not be different from
11:44:55 10 what in the but for world compared to what
11:44:58 11 happened in the actual world given whatever
11:45:00 12 conduct is being challenged.

11:45:02 13 So that's what I've done here,
11:45:05 14 generally speaking.

11:45:06 15 Q. My question concerns the
11:45:09 16 distinction that you make, if any, between
11:45:13 17 a party having an economic incentive to do
11:45:16 18 something and actually acting on that economic
11:45:20 19 incentive. Do you understand that?

11:45:21 20 A. I do understand that.

11:45:23 21 Q. Okay. So with that understanding
11:45:26 22 let me see if I can ask the question I asked
11:45:29 23 again -- I asked before.

11:45:31 24 Is it your opinion, Dr. Williams,
11:45:33 25 in the but for world, that Terra Firma would

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11:45:39 2 have actually delayed its bid for EMI because
11:45:47 3 of the economic incentives that it faced?

11:45:51 4 A. It's my opinion, based on all the
11:45:58 5 analysis that I performed here, that in the but
11:46:03 6 for world Terra Firma would have had an
11:46:13 7 opportunity that would have known it had an
11:46:15 8 opportunity that didn't exist in the actual
11:46:18 9 world. That additional opportunity provided
11:46:21 10 for providing them economic incentive to delay
11:46:26 11 the bid. And it's my view that that economic
11:46:32 12 incentive was sufficient to induce them to
11:46:33 13 delay the bid such that in the but for world
11:46:37 14 they would have acted differently than they did
11:46:40 15 in the actual world.

11:46:41 16 Q. And the economic incentive that
11:46:43 17 you identify in your last question is the net
11:46:50 18 incentives that you concluded would have been
11:46:54 19 apparent to Terra Firma having weighed in a
11:46:57 20 variety of factors that bore on its
11:47:02 21 decision-making; is that correct?

11:47:03 22 MR. GRAVANTE: Objection to the
11:47:17 23 form.

11:47:17 24 A. Please.

11:47:18 25 (The pending question was read as

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11:47:18 2 follows:

11:46:42 3 "Question: And the economic
11:46:42 4 incentive that you identify in your last
11:46:45 5 question is the net incentives that you
11:46:52 6 concluded would have been apparent to
11:46:54 7 Terra Firma having weighed in a variety of
11:46:58 8 factors that bore on its decision-making;
11:47:19 9 is that correct?")

11:47:19 10 A. As an economist, it is not so
11:47:39 11 much I'm focusing on what would be apparent and
11:47:42 12 not apparent. The only reason I'm saying that
11:47:46 13 I know "apparent" has particular meaning to
11:47:48 14 people generally.

11:47:49 15 What I am focused on as an
11:47:51 16 economist is what those economic incentives
11:47:54 17 are. And the reason why as an economist I
11:47:58 18 believe it impacted behavior is that these are
11:48:01 19 sophisticated market participants. They make a
11:48:08 20 living, and make a living at trying to get the
11:48:13 21 best possible return.

11:48:14 22 And to the extent there are
11:48:16 23 economic incentives that will have a
11:48:18 24 significant impact on those returns, then I
11:48:22 25 think I'm making what would be considered the

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14:02:10 2 that in the case of terminated bid process
14:02:16 3 the findings were that the share price of
14:02:19 4 a target company did in fact decrease;
14:02:22 5 isn't that true?"

14:02:38 6 MR. GRAVANTE: Objection to the
14:02:38 7 form.

14:02:41 8 A. I think as we've gone over
14:02:43 9 before, the results of the studies that I cited
14:02:46 10 with respect to the likely impact on the stock
14:02:55 11 price of ending a take over process,
14:02:58 12 unsuccessful ending of a take over process
14:03:01 13 along with the analyses I provided, is that on
14:03:07 14 average that decline, that information, that
14:03:11 15 publically available information lead to
14:03:14 16 negative stock price reaction.

14:03:16 17 That fact, I think this is where
14:03:19 18 you're going, just be clear, that fact in my
14:03:24 19 view suggests a reasonable basis for an
14:03:29 20 expectation on the part of the Plaintiff in
14:03:31 21 this case that had it acted by delaying its
14:03:36 22 bidding, that the expectation would have been
14:03:39 23 that that would have been an impact on the
14:03:41 24 stock price.

14:03:41 25 Q. And if that impact on the stock

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14:03:45 2 price had occurred, that would provide the
14:03:50 3 bidder with the potential for purchasing the
14:03:53 4 company at a lower price?

14:03:58 5 A. Again, just to make sure we --
14:04:00 6 that's not the only factor, I mean I know I
14:04:03 7 testified to this before. I will make sure I'm
14:04:05 8 clear. It is not just that one factor. It is
14:04:07 9 all the other factors that I mentioned. But
14:04:10 10 when you take all the factors in totality, that
14:04:13 11 the expectation of a stock price decline, the
14:04:16 12 fact that the trends toward the bid and asked
14:04:20 13 impacts were declining over time. The fact
14:04:23 14 that EMI was a distressed seller. The fact
14:04:26 15 that the auction process was really set up to
14:04:28 16 benefit the target firm.

14:04:33 17 All those things combined would
14:04:36 18 lead to the conclusion that the economic
14:04:40 19 incentives were such that Terra Firma had
14:04:44 20 incentive to delay its bid.

14:04:45 21 Q. And it had an incentive because
14:04:48 22 there was an opportunity to benefit from a
14:04:51 23 lower stock price as a result of the
14:04:53 24 termination of the bid process; is that
14:05:00 25 correct?

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14:05:00 2 A. It had an incentive for all of
14:05:03 3 the reasons that I gave. Ultimately the reason
14:05:07 4 being that all those factors put it in a
14:05:12 5 position to get, to pay a lower price for the
14:05:17 6 target firm. Not just focusing on the stock
14:05:19 7 price, but to get a better deal than it
14:05:21 8 otherwise would have gotten but for the alleged
14:05:23 9 conduct.

14:05:25 10 Q. Do you have an opinion,
14:05:27 11 Dr. Williams, as to what degree the stock price
14:05:32 12 would have dropped in the but for world?

14:05:37 13 A. For the purposes of my analysis,
14:05:39 14 the focus is really not on the magnitude. I
14:05:44 15 think, you know, as you can tell from my report
14:05:45 16 I did not attempt to forecast that. I haven't
14:05:48 17 forecasted it.

14:05:49 18 So I don't have an opinion
14:05:51 19 specifically on what the -- I haven't tried to
14:05:54 20 quantify that impact. But what we do know is
14:05:59 21 the impact, I think I say in my report is
14:06:01 22 likely to be at least as large as the, at least
14:06:05 23 as large as the bid announcement premium.

14:06:09 24 And we've observed that in the
14:06:11 25 data, too, sometimes the news of a failure

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14:06:15 2 actually leads to a bigger impact than the
14:06:18 3 actual announcement did. But I haven't
14:06:20 4 attempted to quantify that.

14:06:24 5 Q. But it is the case that although
14:06:29 6 you haven't quantified the drop in the price,
14:06:34 7 that it's your opinion that in the but for
14:06:36 8 world the stock price of EMI would decline to
14:06:41 9 some degree.

14:06:49 10 A. That's not necessary for my
14:06:51 11 opinion. I think we are kind of mixing up the
14:06:54 12 analysis and the analysis.

14:06:55 13 The evidence shows that empirical
14:06:58 14 reality. The basis of the empirical reality
14:07:01 15 across all these different analyses I presented
14:07:07 16 that the economic evidence consistently shows
14:07:10 17 this negative stock price reaction.

14:07:13 18 Therefore, well informed
14:07:15 19 participant has a reasonable expectation that
14:07:18 20 that would happen. I have not gone as far as
14:07:21 21 trying to predict what would have happened in
14:07:23 22 the but for world, which is really not
14:07:25 23 necessary for my analysis because the conduct
14:07:27 24 would be based on what you would expect to
14:07:28 25 happen.

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14:27:05 2 bidding process is allowed to end

14:27:09 3 unsuccessfully.

14:27:10 4 So, certainly that comes into, it

14:27:13 5 takes into account the competitive pressures.

14:27:16 6 But it doesn't require a quantification of a

14:27:20 7 bid by an alternative bidder.

14:27:21 8 Q. And your opinion does not require

14:27:29 9 that you posit the re-entry of a competitive

14:27:40 10 bidder into the process after May 21 in the but

14:27:43 11 for world; isn't that also true?

14:27:52 12 A. I don't understand the question.

14:27:53 13 I mean I take into account competitive

14:27:56 14 pressure. So you may be asking me something

14:27:58 15 specific about --

14:27:59 16 Q. It's every simple. I understand

14:27:59 17 you have taken into account competitive

14:28:01 18 pressure.

14:28:02 19 A. Right.

14:28:02 20 Q. We talked about that before. My

14:28:04 21 question is slightly different.

14:28:05 22 A. Okay.

14:28:06 23 Q. My question is whether it's your

14:28:07 24 opinion in the but for world a competitive

14:28:10 25 bidder would re-enter the bid process and bid

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14:28:15 2 for EMI at a price below 2.65 pounds, simply
14:28:19 3 whether your opinion encompasses that or not?

14:28:24 4 A. My opinion encompasses the
14:28:26 5 possibility of that. But that is not an opinion
14:28:29 6 in my report. That is not part of the opinion
14:28:31 7 because the opinion that I'm looking at is an
14:28:34 8 opinion of what Terra Firma would likely do
14:28:37 9 taking into account competitive pressure. So --

14:28:44 10 Q. Right.

14:28:44 11 A. So, there is no -- so when you
14:28:48 12 say you posit this or don't posit that, that is
14:28:51 13 irrelevant to the decision -- it is not
14:28:54 14 relevant to the decisions that I analyze, only
14:28:57 15 to the extent you have taken into account the
14:28:59 16 competitive pressure, what competitors are
14:29:02 17 likely to do. That is taken into account.

14:29:04 18 But that does not require the
14:29:06 19 type of quantification I believe you are
14:29:08 20 alluding to.

14:29:08 21 Q. In your but for world how long
14:29:13 22 does Terra Firma delay making a bid?

14:29:16 23 A. Well, again, in my analysis it's
14:29:23 24 based on to the extent possible data and
14:29:25 25 analyses.

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14:29:26 2 So we have a few benchmarks. The
14:29:28 3 benchmarks are that between the Premira and
14:29:32 4 Warner bid there was 12 or 13 weeks. And
14:29:35 5 between the Warner bid and the Terra Firma bid
14:29:39 6 it was in the 12 and 13 week range.

14:29:41 7 And then we also know from,
14:29:45 8 generally from academic research that the time
14:29:48 9 between subsequent bids by sole bidders is in
14:29:53 10 the nine week range.

14:29:53 11 So, those benchmarks would be the
14:29:58 12 best indication, in my view of the time
14:30:03 13 between, you know, one big consideration and
14:30:06 14 the next big consideration.

14:30:07 15 Q. And if I accept what you say as
14:30:11 16 true and the range of potential delay you in
14:30:13 17 your but for world is approximately 12 to 13
14:30:18 18 weeks, is it your testimony that the price
14:30:25 19 effect that Terra Firma could have expected to
14:30:29 20 see in your but for world would not materialize
14:30:33 21 for 12 or 13 weeks?

14:30:35 22 A. No. That's incorrect.

14:30:37 23 Q. So then why should we expect
14:30:41 24 Terra Firma in your but for world to delay for
14:30:44 25 that period of time before deciding whether or

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14:30:50 2 not to re-enter the bid process given the lower
14:30:54 3 price that it would expect to see?

14:31:02 4 A. I think you don't completely
14:31:03 5 understand the analysis. So, these price
14:31:08 6 changes according to economic size, these
14:31:14 7 abnormal returns are being estimated are
14:31:20 8 permanent changes in the stock price based on
14:31:22 9 that information.

14:31:23 10 There might be other events that
14:31:25 11 occur that affect the value of the equity. But
14:31:29 12 with respect to this particular event, those
14:31:34 13 changes are rapidly incorporated and they are
14:31:38 14 permanent.

14:31:38 15 So once the effect happens you
14:31:42 16 are at a new equilibrium level, if you will.
14:31:45 17 That equilibrium level, there might be random
14:31:49 18 variation, but generally you're going to be at
14:31:51 19 that same level, subject to other development.

14:31:53 20 Q. And that equilibrium level of the
14:31:56 21 stock price will occur in a matter of days
14:32:00 22 after the announcement of the busted auction;
14:32:03 23 isn't that true?

14:32:03 24 A. The stock price reaction would be
14:32:08 25 in response to publically available information

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14:32:10 2 about the announcement which would be on or
14:32:13 3 shortly after the ending date. Yes.

14:32:17 4 Q. And do you have a view as to how
14:32:19 5 long it would take for the level of the stock
14:32:23 6 price to reach this equilibrium level in
14:32:26 7 response to this new public information about
14:32:29 8 the termination of the bid process?

14:32:31 9 A. As we've seen from the research
14:32:33 10 that I've presented in the report it happens
14:32:36 11 rapidly, in a day or two.

14:32:37 12 Q. Right. Is it your opinion within
14:32:43 13 a day or two, having seen this negative stock
14:32:49 14 price reaction, Terra Firma nonetheless would
14:32:51 15 not make a renewed bid at that lower
14:32:54 16 equilibrium price level?

14:33:02 17 A. I think your question is what or
14:33:06 18 let me phrase the question this way, what
14:33:08 19 factors contribute to the timing of another
14:33:14 20 bid. I think the factors that contribute to
14:33:16 21 the timing of another bid, first we have to
14:33:21 22 look as an economist, the first thing I am
14:33:25 23 going to do is look at the economic evidence.

14:33:26 24 The economic evidence suggests
14:33:28 25 the time between bids with respect to this

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14:33:36 2 particular case was in the 12 or 13 week range
14:33:39 3 and we've seen generally for larger samples for
14:33:41 4 big samples it has been in the nine week range
14:33:45 5 for sole bidders.

14:33:46 6 So empirically we have some
14:33:50 7 evidence of the time between bids then also
14:33:56 8 importantly I know you keep wanting to focus on
14:34:01 9 the stock price reaction, but I keep naming all
14:34:03 10 these other factors that matter, the bargaining
14:34:08 11 position of the bidder relative to EMI, EMI's
14:34:12 12 distressed situation, all of these factors
14:34:15 13 matter.

14:34:18 14 So if there is another bid I am
14:34:20 15 not trying to abstract from the bid process
14:34:22 16 that exists, I would imagine that, I would
14:34:25 17 imagine based on what's happened before there
14:34:27 18 would be negotiations and therefore the
14:34:32 19 empirical findings we have about the time
14:34:37 20 between the duration I believe is a reasonable
14:34:40 21 benchmark for what we might expect in this
14:34:42 22 case. Maybe one of the best benchmarks.

14:34:48 23 Q. First let me say I accept all the
14:34:50 24 other reasons that you've testified to before.
14:34:53 25 So when I ask you questions about the impact of

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14:34:56 2 the price change, I don't mean to exclude your
14:34:59 3 prior testimony. I understand your prior
14:35:01 4 testimony on that.

14:35:04 5 But to keep us focused you
14:35:08 6 referenced the empirical evidence as showing
14:35:11 7 that there is a nine to 12 to 13 week period
14:35:16 8 between bids. The empirical evidence reflect
14:35:20 9 that that period of time has passed for bids by
14:35:25 10 the same bidder?

14:35:32 11 A. It may or may not. I'd have to
14:35:34 12 check that.

14:35:39 13 Q. Is it your opinion that when
14:35:45 14 faced with the likely negative price impact
14:35:53 15 arising from the decision to delay a bid, Terra
14:35:59 16 Firma would not be bidding at the renewed
14:36:03 17 equilibrium price it was presented with?

14:36:06 18 MR. GRAVANTE: Objection to the
14:36:10 19 form.

14:36:10 20 A. Well you're asking me a question,
14:36:12 21 you're asking me to forecast the bid price,
14:36:14 22 which I already said I haven't done. So I
14:36:17 23 can't answer that particular question.

14:36:19 24 Q. Okay. Did you consider whether
14:36:23 25 or not in the but for world Terra Firma would

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14:51:51 2 With respect to EMI, the time
14:51:53 3 between subsequent bids on two different
14:51:55 4 separate occasions was in the 12 to 13 week
14:51:58 5 range. So that's my best estimate, as I have
14:52:02 6 said, I said this like four types, that's my
14:52:05 7 best estimate of what the duration of the delay
14:52:07 8 would be.

14:52:07 9 And in addition to that there is
14:52:10 10 academic studies that suggest that the delay
14:52:12 11 between subsequent bids is in the nine week
14:52:15 12 range.

14:52:15 13 So, those are the benchmarks that
14:52:19 14 I look to in trying to assess what the duration
14:52:23 15 of a delay might be. That's based on objective
14:52:29 16 estimates.

14:52:29 17 Q. And the two separate occasions
14:52:31 18 that you're referring to where this was a 12 to
14:52:37 19 13 week period between bids are what exactly?

14:52:43 20 A. From Premira to, between the
14:52:45 21 Premira bid and the Warner bid there is a 12 or
14:52:48 22 13 week period. And from the Warner bid to the
14:52:52 23 Terra Firma bid there was a 12 or 13 week
14:52:54 24 period.

14:52:55 25 Q. In neither of those cases did the

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14:52:59 2 two separate bids involve the same bidder; is
14:53:02 3 that true?

14:53:02 4 A. In those two cases there were
14:53:04 5 different bidders.

14:53:04 6 Q. And you referred to an Andrews &
14:53:09 7 Kurth study, is that what you referred to, the
14:53:11 8 other empirical evidence that suggested a nine
14:53:14 9 week period --

14:53:20 10 A. Sorry.

14:53:20 11 Q. No. That's fine. You also
14:53:25 12 referenced, did you not, another study, study
14:53:28 13 or studies by Andrews & Kurth that suggest the
14:53:32 14 delay between subsequent bids is in the nine
14:53:34 15 week range?

14:53:35 16 A. I do believe nine weeks, there is
14:53:39 17 a nine week range, right. Which --

14:53:42 18 Q. Do you cite that in your report?

14:54:43 19 A. Quite frankly I don't remember
14:54:45 20 the citation on that as I sit here.

14:54:53 21 Q. In the but for world if Terra
14:54:58 22 Firma expected a competing bid from Warner
14:55:08 23 Music Group for EMI would that impact your
14:55:13 24 testimony that it would likely delay making a
14:55:18 25 bid for nine to 13 weeks?

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14:55:24 2 MR. GRAVANTE: Objection to the
14:55:24 3 form.

14:55:30 4 A. My opinion about the duration is
14:55:32 5 just based on what the average duration is.
14:55:34 6 There is our best evidence ex-ante of what the
14:55:38 7 duration would be.

14:55:39 8 Now, so, in some sense you sort
14:55:44 9 of change the factual situation in your
14:55:46 10 hypothetical.

14:55:47 11 Q. It is a hypothetical. That's
14:55:48 12 right.

14:55:49 13 A. What if a bid comes in before
14:55:50 14 that, would Terra Firma have an incentive. If
14:55:54 15 they wanted to acquire a company they would
14:55:56 16 have an incentive to respond to that bid.

14:55:59 17 But going back to my analysis I'm
14:56:02 18 just looking at the change in what their
14:56:04 19 expected gains were. So they would have
14:56:06 20 incentive to respond to that bid at any time
14:56:09 21 and they could still delay and get these
14:56:11 22 benefits that I'm talking about and still have
14:56:14 23 the opportunity to respond to any bidder that
14:56:15 24 might bid at some subsequent period.

14:56:21 25 Q. But if under my hypothetical

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14:56:24 2 Warner Music Group did come in with a competing
14:56:26 3 bid Terra Firma would not have the luxury of
14:56:28 4 delaying any counter bid for nine to 13 weeks;
14:56:33 5 isn't that true?

14:56:34 6 MR. GRAVANTE: Objection to the
14:56:42 7 form.

14:56:42 8 A. Look, this is outside the scope
14:56:44 9 of my analysis first and foremost. The scope
14:56:46 10 of my analysis is just what are the incentives
14:56:50 11 that are facing Terra Firma as of prior to the
14:56:58 12 deadline if they had known they were the sole
14:57:00 13 bidder. What are their incentives at that
14:57:03 14 point.

14:57:03 15 And what they do in response to
14:57:05 16 something that actually happened subsequent to
14:57:07 17 that doesn't really change my opinion about
14:57:12 18 what their expectation are about the gain from
14:57:15 19 taking that action at that particular moment.

14:57:20 20 But in direct response to your
14:57:22 21 question, which is not directly related to my
14:57:25 22 analysis, if nothing had changed in the world
14:57:32 23 that you imagine, if nothing had changed, if
14:57:34 24 Terra Firma still intended to acquire the EMI
14:57:39 25 and there was a subsequent bid, they may have

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14:57:42 2 an incentive to respond to that, assuming
14:57:45 3 everything else was the same.

14:57:46 4 But that's not necessary for the
14:57:49 5 purposes of my analysis.

14:57:54 6 Q. But you do also opine, do you
14:57:56 7 not, that financial conditions in the
14:58:02 8 marketplace would have deteriorated during this
14:58:05 9 period in which Terra Firma was delaying its
14:58:08 10 bid such that Terra Firma would be unable to
14:58:10 11 secure financing for that bid; isn't that true?

14:58:16 12 MR. GRAVANTE: Objection to the
14:58:17 13 form.

14:58:17 14 A. I am going to have to ask to have
14:58:19 15 that read back.

14:58:37 16 Q. That's fine.
14:58:37 17 (The pending question was read as
14:58:37 18 follows:

14:57:54 19 "Question: But you do also
14:57:55 20 opine, do you not, that financial conditions in
14:58:02 21 the marketplace would have deteriorated during
14:58:05 22 this period in which Terra Firma was delaying
14:58:08 23 its bid such that Terra Firma would be unable
14:58:10 24 to secure financing for that bid; isn't that
14:58:13 25 true?"

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14:58:39 2 A. I do opine that -- I do opine
14:58:41 3 that Terra Firma, given the best estimate of
14:58:47 4 the duration of the delay would be impacted by
14:58:52 5 the credit crisis. Again, so I am giving you
14:58:57 6 my best estimate of a delay.

14:58:59 7 If there is any other evidence
14:59:01 8 that would relate to that, to what the delay
14:59:04 9 might be, I'm happy to consider that. But as an
14:59:06 10 economist, I have to look to the objective
14:59:09 11 evidence and not speculate about what might
14:59:11 12 have happened.

14:59:12 13 Q. So, if I understand, your opinion
14:59:14 14 is the in but for world Terra Firma would have
14:59:17 15 delayed making a bid for a range of nine to 13
14:59:23 16 weeks, and during that period financial
14:59:26 17 conditions would have deteriorated to an effect
14:59:29 18 where it, Terra Firma, at the end of that
14:59:31 19 period, would be unable to secure financing for
14:59:35 20 a bid; is that your opinion?

14:59:36 21 MR. GRAVANTE: Objection to the
14:59:42 22 form.

14:59:42 23 A. My opinion generally, I think it
14:59:44 24 is generally consistent with what you said, but
14:59:47 25 let me just state it for the record, my opinion

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14:59:49 2 is that but for the alleged fraud, Terra Firma
14:59:52 3 would have had an economic incentive to delay
14:59:55 4 its bid. And that the estimate of the duration
15:00:02 5 of the delay, relying on data that we have in
15:00:07 6 our possession in this case is that the range
15:00:09 7 of that delay would be in the nine to 12 week
15:00:14 8 range based on the best available evidence.

15:00:17 9 And based on an assessment of
15:00:20 10 what the credit conditions were, that it would
15:00:23 11 be very unlikely that Terra Firma would be able
15:00:28 12 to acquire financing on similars terms, if at
15:00:31 13 all in that time period.

15:00:34 14 Q. Do you state anywhere in your
15:00:36 15 report, Dr. Williams, that the likely delay in
15:00:38 16 the but for world would be nine to 13 weeks?

15:00:48 17 I'm looking at your section of
15:00:50 18 your report beginning paragraph 50. Which is
15:00:54 19 titled Credit Constraints in the Debit Market
15:00:57 20 Adversely Impacted Terra Firma's Ability to Bid
15:01:00 21 After the Auction.

15:02:12 22 A. I don't think that number is in
15:02:13 23 here, but I have the dates in here of the
15:02:15 24 auction, so it is easy to determine. I don't
15:02:18 25 think that number is actually in here.

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15:02:36 2 Q. Is it your opinion, Dr. Williams,
15:02:38 3 that in the but for world the market would not
15:02:42 4 have viewed EMI in play if there were no
15:02:45 5 bidders on May 21?

15:02:49 6 A. It's my understanding as of May
15:02:54 7 21 that if Terra Firma had not bid that there
15:02:56 8 would not have been any active bids for EMI at
15:03:00 9 that time. I don't know really exactly what
15:03:08 10 you mean by whether the market says it is in
15:03:11 11 play. My definition of whether it is in play or
15:03:14 12 being bid upon is if there is no bid pending at
15:03:17 13 that time.

15:03:17 14 Q. So you have no opinion one way or
15:03:19 15 the other on the market reaction to a decision
15:03:28 16 by Terra Firma not to bid on May 21 in the but
15:03:34 17 for world?

15:03:34 18 MR. GRAVANTE: Objection to the
15:03:34 19 form.

15:03:38 20 A. We spent a lot of time talking
15:03:40 21 about the market reaction if they don't bid.
15:03:42 22 Are you saying May 21 versus May 23? I guess I
15:03:45 23 don't understand what you're asking me.

15:03:48 24 Q. That's fair. My real question is
15:04:00 25 whether you have an opinion as to whether the

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16:02:25 2 separate things, both could be true, they are
16:02:30 3 not mutually exclusive.

16:02:31 4 Q. But how do you know that? How do
16:02:34 5 you know, Dr. Williams, if in the but for world
16:02:36 6 Terra Firma declines not to bid on the one
16:02:42 7 hand, while at the same time there are rumors
16:02:44 8 in the marketplace about other competing
16:02:47 9 bidders for EMI, how can you determine, how can
16:02:52 10 you determine the relevant effects on the stock
16:02:54 11 price from those two factors?

16:02:59 12 MR. GRAVANTE: Same objection.

16:03:01 13 A. I'm sorry. The event study
16:03:06 14 methodology is designed for that very purpose.
16:03:09 15 That is what the event study methodology does.
16:03:12 16 Right. So, starting with that, starting with
16:03:15 17 how the events study methodology is how you do
16:03:19 18 that.

16:03:24 19 Then also based on my, just based
16:03:28 20 on the record evidence in this case, we've seen
16:03:32 21 unsuccessful bids associated with negative
16:03:34 22 stock price reactions which I've documented,
16:03:37 23 despite the fact there are rumors that someone
16:03:40 24 else might be out there bidding or might
16:03:42 25 potentially bid in some future point in time.

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16:03:45 2 We've observed it. And we also
16:03:51 3 observed the converse of that, when there were
16:03:53 4 rumors out there that someone might be taking
16:03:56 5 over, they might submit a bid in this auction
16:04:07 6 that is the focus of my report we see a stock
16:04:11 7 price appreciation. Which says that the
16:04:15 8 market, there is additional information that is
16:04:17 9 being incorporated that is separate from
16:04:19 10 whatever rumors that you're alluding to.

16:04:41 11 Q. I'm sorry, just bear with me for
16:04:43 12 a second.

16:04:58 13 Turn to paragraph 46 of your
16:05:00 14 report it says "In the but for world where
16:05:14 15 Terra Firma did not receive the alleged
16:05:15 16 fraudulent information about the existence of
16:05:17 17 another bidder and instead was correctly
16:05:19 18 informed that it was the sole bidder before
16:05:21 19 placing its final bid, Terra Firma would have
16:05:24 20 had the ability to unilaterally bust the
16:05:30 21 auction by simply delaying its bid."

16:05:33 22 Do you see that?

16:05:33 23 A. Yes.

16:05:37 24 Q. First question, you state in that
16:05:38 25 sentence in your but for world "Terra Firma was

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16:05:42 2 correctly informed that it was the sole bidder
16:05:44 3 before placing its bid."

16:05:45 4 Do you see that?

16:05:46 5 A. Yes.

16:05:47 6 MR. GRAVANTE: Objection to the
16:05:51 7 form.

16:05:51 8 Q. Why is that the information that
16:05:52 9 Terra Firma would have received in the but for
16:05:56 10 world?

16:05:56 11 MR. GRAVANTE: Objection to the
16:05:57 12 form.

16:05:57 13 A. My understanding of the claims is
16:05:58 14 that the nature of the fraud was to inform
16:06:05 15 Terra Firma that it was bidding against one
16:06:09 16 other bidder, when in fact that other bidder
16:06:13 17 had already withdrawn. They were the last two
16:06:16 18 bidders.

16:06:17 19 So, had that not been -- had that
16:06:20 20 not -- had they been told they were the sole
16:06:24 21 bidder, they would have known there was no one
16:06:26 22 else bidding against them.

16:06:27 23 Q. Isn't the purpose of positing a
16:06:32 24 but for world to develop an alternative
16:06:33 25 scenario where the conduct did not occur?

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16:06:40 2 A. That's true.

16:06:41 3 Q. Then why isn't the appropriate
16:06:43 4 but for world here one in which the
16:06:47 5 representation simply wasn't made at all?

16:06:51 6 A. Because my understanding is
16:06:53 7 representation, you know, this was part of an
16:06:56 8 ongoing discussion. This is I'm taking as
16:06:59 9 given this is part of the allegation as I
16:07:01 10 understand it.

16:07:01 11 And those revelations, I don't
16:07:04 12 think that the Defendant had to make any
16:07:06 13 revelations in the actual world. But they did.
16:07:09 14 And given that they did, the claim here those
16:07:13 15 revelations were fraudulent.

16:07:16 16 So I think, you know, the same
16:07:17 17 would be true in any matter. You don't get to
16:07:21 18 reverse the whole transaction, if someone acts
16:07:23 19 bad within the transaction you just eliminate
16:07:25 20 the bad conduct.

16:07:25 21 Q. But you're just not eliminating
16:07:29 22 the bad conduct; are you? What you're doing is
16:07:32 23 in your but for world you're substituting a
16:07:36 24 representation for that which is alleged to
16:07:39 25 have been fraudulent; isn't that correct?

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16:29:47 2 in paragraph 22 is not important for my
16:29:50 3 analysis is that my analysis is based simply on
16:29:54 4 the opportunity to negotiate a better deal.
16:29:58 5 It's not based on some inference about what the
16:30:03 6 value of EMI is.

16:30:34 7 Q. I'm sorry, bear with me, I'm
16:30:35 8 trying to be efficient.

16:30:56 9 Let me skip up, Dr. Williams, to
16:31:09 10 paragraph 41. In the second sentence of
16:31:24 11 Fischel's paragraph 41 he states "In order to
16:31:28 12 test whether financing for large leveraged
16:31:30 13 buy-out transactions (LBOs) was available after
16:31:33 14 May 21, 2007, I investigated whether other LBOs
16:31:36 15 valued more than \$1 billion were announced
16:31:39 16 between May 21, 2007 and December 31, 2007.
16:31:44 17 Exhibit I shows that 62 large LBOs were
16:31:48 18 announced during this period, 51 of which were
16:31:50 19 completed. The Exhibit also shows that 12 of
16:31:52 20 these transactions were larger than Terra
16:32:01 21 Firma's purchase of EMI, 9 of which were
16:32:01 22 completed."

16:32:01 23 Do you see that?

16:32:01 24 A. I do see that.

16:32:05 25 MR. GRAVANTE: Just for the record

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16:32:05 2 it's the third sentence.

16:32:06 3 MR. CARNEY: Thank you. Apologies.

16:32:10 4 Q. Do you recall reading that
16:32:11 5 portion of Dr. Fischel's report?

16:32:17 6 A. I do. You know, I interpret his
16:32:19 7 data very differently. I think his data
16:32:20 8 actually proved my point to a large extent.
16:32:24 9 The large transactions that he refers to, I
16:32:31 10 believe, you know, there was no transaction as
16:32:32 11 large as Terra Firma's after the first few days
16:32:35 12 of July even though he is encompassing this
16:32:41 13 total period.

16:32:41 14 If you look at his own data there
16:32:43 15 is a dramatic decline in the availability of
16:32:46 16 financing as indicated by the successful LBO
16:32:52 17 activity during that period.

16:32:53 18 Q. When did that decline occur
16:32:55 19 according to your interpretation of this? Turn
16:32:58 20 to Exhibit I of Fischel, if that helps.

16:33:04 21 MR. GRAVANTE: I am going to object
16:33:05 22 to the form of that question.

16:33:37 23 Q. Let's take a look at Exhibit I.
16:33:41 24 You testified, Dr. Williams, that his data
16:33:43 25 actually proves your point to a large extent

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16:33:49 2 insofar as the large transactions that he
16:33:54 3 referred to in fact were not as large as Terra
16:33:57 4 Firma's after the first few days of July.

16:34:02 5 A. Most of the big transactions were
16:34:03 6 occurring before of July 4th, I believe. Just
16:34:08 7 based on his --

16:34:09 8 Q. Of 2007?

16:34:10 9 A. Of 2007 -- based on his
16:34:13 10 Exhibit I.

16:34:18 11 Q. Is it your opinion the number of
16:34:20 12 large transactions declined after approximately
16:34:24 13 July 4th, 2007?

16:34:28 14 A. I'm not rendering an opinion.
16:34:28 15 This is his data. I am just looking at his
16:34:30 16 data. I am just eye balling it here.

16:34:34 17 Q. Okay. I'm just trying to
16:34:35 18 understand whatever critiques you have of
16:34:37 19 Dr. Fischel's data.

16:34:38 20 You had mentioned first that the
16:34:49 21 transactions, as you read this data, the
16:34:49 22 transactions that are larger than Terra Firma's
16:34:54 23 all took place prior to early July 2007; is
16:34:58 24 that correct?

16:34:58 25 A. Most of the big transactions are

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16:35:11 2 early in the period. If you just look at data
16:35:11 3 here.

16:35:11 4 Q. By that you're looking in the far
16:35:11 5 right-hand column?

16:35:11 6 A. Right. They are all before July
16:35:11 7 4th. Again, all I'm saying when you look at
16:35:16 8 the data and you look at, also when you look at
16:35:31 9 the timing of the transaction, most of these
16:35:33 10 transactions are in the earlier period and
16:35:35 11 there is a lot fewer in the later period.
16:35:37 12 That's it.

16:35:44 13 Q. Do you have any other criticisms
16:35:45 14 of Dr. Fischel's use of this analysis as set
16:35:51 15 out in Exhibit I?

16:35:53 16 MR. GRAVANTE: Objection to the
16:36:06 17 form.

16:36:06 18 A. I mean generally I think -- I
16:36:09 19 disagree with the conclusion that is being
16:36:10 20 drawn for it. There might be a number of
16:36:13 21 specific criticisms that come out of that.

16:36:15 22 But generally the idea that
16:36:17 23 because a few LBOs transactions, some LBO
16:36:25 24 transactions and no one is denying some LBO
16:36:28 25 transactions are being financed, that the

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16:42:37 2 Q. You don't know if they went back
16:42:39 3 six months to January 1, 2007?

16:42:41 4 A. I don't recall exactly.

16:42:44 5 Q. Am I approximately right?

16:42:45 6 A. Yeah. I know we didn't go back
16:42:48 7 five years or anything like that.

16:42:55 8 MR. CARNEY: They are going to
16:42:56 9 change the tape. Why don't we take a
16:42:57 10 short break. I will go through my notes
16:42:59 11 see whatever cleanup we have. But I think
16:43:02 12 I'm getting there.

16:43:03 13 VIDEOGRAPHER: Here now marks the
16:43:07 14 end of tape 5 of the deposition of
16:43:08 15 Dr. Darrell L. Williams. Time is 4:42
16:43:12 16 p.m. We are now off the record.

16:43:14 17 (Recess taken.)

16:52:12 18 VIDEOGRAPHER: Here now marks the
16:52:30 19 beginning of tape 6 of the deposition of
16:52:32 20 Dr. Darrell L. Williams. The time is 4:52
16:52:35 21 p.m. We are back on the record.

16:52:37 22 EXAMINATION CONDUCTED BY MR. CARNEY:

16:52:37 23 Q. Just a couple more questions,
16:52:39 24 Dr. Williams. First let me just take you back
16:52:43 25 to our discussion about the but for world.

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16:52:46 2 Hypothetically if the but for world you
16:52:48 3 constructed was one in which there simply were
16:52:52 4 no representations made one way or the other by
16:52:56 5 Citigroup to Terra Firma, would that change
16:52:57 6 your analysis?

16:53:01 7 MR. GRAVANTE: Objection to the
16:53:08 8 form.

16:53:08 9 A. I mean it would be something I
16:53:09 10 would want to think about. But in my view it
16:53:17 11 is not a proper but for world, so I haven't
16:53:20 12 thought about that.

16:53:21 13 Q. Let me turn briefly to the
16:53:22 14 subject of damages. Can you turn to paragraph
16:53:26 15 53 of your report.

16:53:32 16 A. Say it again.

16:53:33 17 Q. Paragraph 53.

16:53:34 18 A. Uh-huh.

16:53:37 19 Q. You are not offering an opinion
16:53:38 20 on damages as you testified before; correct?

16:53:40 21 A. I'm not.

16:53:41 22 Q. And it never was your intent when
16:53:43 23 you prepared this report to offer an opinion on
16:53:46 24 damages?

16:53:47 25 A. That's correct.

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16:53:48 2 Q. Is that correct?

16:53:48 3 A. Yes.

16:53:49 4 Q. Your summary of your opinions
16:53:53 5 don't include any reference to damages;
16:53:56 6 correct?

16:53:56 7 A. Correct. Nor does the
16:53:58 8 description of my assignment.

16:54:00 9 Q. That is certainly true. Why
16:54:03 10 then, sir, did you include a section on damages
16:54:05 11 here?

16:54:10 12 A. Again, I'm just referencing in
16:54:13 13 this case what the damages expert did. Because
16:54:18 14 there is all these various laws which I'm not
16:54:21 15 aware of particularly to do that reference
16:54:24 16 required more space. But it's merely
16:54:27 17 referencing that information.

16:54:36 18 Q. What did you do to assure
16:54:37 19 yourself what Ms. DeMario had done with respect
16:54:43 20 to a damages analysis was reliable?

16:54:48 21 A. Again, I am not opining on
16:54:51 22 Ms. DeMario's analysis one way or the other. I
16:54:54 23 am not proofing her analysis or confirming it
16:54:57 24 any more than I am anyone else's.

16:55:01 25 I think it is perfectly clear I'm

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16:55:03 2 saying if this is what you accept, then this is
16:55:05 3 what the number is.

16:55:09 4 Q. You say in paragraph 53 "I rely
16:55:12 5 upon several computations by Ms. DeMario for
16:55:14 6 the following propositions."

16:55:15 7 Then you go on and essentially
16:55:18 8 summarize what Ms. DeMario did; is that fair?

16:55:23 9 A. I don't think it is fair to say I
16:55:25 10 summarize what she did because I think her
16:55:27 11 report is fairly long. All I do here is to
16:55:30 12 write out what the quantities are associated
16:55:32 13 with each one the of the specific damage
16:55:35 14 concepts.

16:55:36 15 Q. Those quantities are based
16:55:37 16 entirely on Ms. DeMario's analysis; correct?

16:55:40 17 A. I am not rendering any
16:55:41 18 independent analysis whatsoever with respect to
16:55:44 19 damages. I am only referencing what was done.

16:55:49 20 Q. You have done no independent work
16:55:51 21 to verify what Ms. DeMario has done is
16:55:57 22 reliable?

16:55:58 23 A. I am being retained in this case
16:55:59 24 as an independent expert. I was not retained
16:56:01 25 as part of Ms. DeMario's team. It wasn't part

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16:56:04 2 of my assignment to support her, proof her work
16:56:07 3 or otherwise make a determination about the
16:56:12 4 contents of that report.

16:56:16 5 Q. So, did you, prior to signing
16:56:19 6 your report and submitting it on June 14th see
16:56:24 7 any drafts of Ms. DeMario's report?

16:56:26 8 A. No.

16:56:31 9 Q. From what source did you
16:56:32 10 understand what it was that Ms. DeMario was
16:56:33 11 doing on or before June 14th?

16:56:37 12 A. What do you mean by what she was
16:56:40 13 doing? Meaning that she --

16:56:44 14 Q. Simple, you wrote two and a half
16:56:46 15 pages here in your report that was signed June
16:56:49 16 14th that describes Ms. DeMario's analysis and
16:56:58 17 the numbers that she arrived at.

16:57:00 18 My question is what's the source
16:57:02 19 of this information?

16:57:04 20 MR. GRAVANTE: Objection to the
16:57:06 21 form.

16:57:06 22 A. First of all, I completely
16:57:08 23 disagree with the characterization there is two
16:57:10 24 and a half reports of Ms .DeMario.

16:57:12 25 Ms. DeMario's contribution to

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16:57:14 2 these two and a half reports is limited -- two
16:57:16 3 and a half pages is limited to six numbers in
16:57:18 4 those two -- however many numbers it is. I
16:57:21 5 think maybe about six numbers in those two and
16:57:24 6 a half pages.

16:57:24 7 If you were to write out what
16:57:26 8 part of this comes from Ms. DeMario would all
16:57:29 9 fit probably on two lines of text.

16:57:30 10 That being said, this information
16:57:37 11 was, the numbers, right, the drafting, but the
16:57:42 12 numbers themselves were communicated to me by
16:57:45 13 my staff who got them from Ms. DeMario. But I
16:57:48 14 was never in contact with her and never read
16:57:50 15 any drafts of her report.

16:57:51 16 Q. Did your staff read any drafts of
16:57:54 17 her report?

16:57:54 18 A. That, I don't know.

16:57:57 19 Q. Do you know if your staff was in
16:57:58 20 contact with either Ms. DeMario or her staff
16:58:02 21 for the purpose of understanding her opinions
16:58:04 22 on damages?

16:58:07 23 A. Someone had to communicate with
16:58:08 24 the staff in order to give them these six
16:58:11 25 numbers, however many that are in there. I

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16:58:13 2 presume there was a phone call or something
16:58:15 3 where they said here are the numbers.

16:58:18 4 That's the extent of my
16:58:21 5 knowledge.

16:58:21 6 Q. Is it your understanding that
16:58:22 7 your staff did not undertake any independent
16:58:28 8 analysis to ascertain whether Ms. DeMario's
16:58:32 9 analysis was reliable?

16:58:34 10 MR. GRAVANTE: Objection to the
16:58:34 11 form. Asked and answered.

16:58:40 12 Q. I just want to make clear your
16:58:41 13 staff didn't do it?

16:58:43 14 A. My staff wasn't involved in
16:58:45 15 computing any of these damages. Right.

16:58:53 16 Q. So you don't have a view one way
16:58:55 17 or the other whether Ms. DeMario's calculations
16:58:58 18 are correct; fair?

16:59:00 19 MR. GRAVANTE: Objection to the
16:59:01 20 form.

16:59:01 21 A. I mean I have no reason to
16:59:03 22 disbelieve what she's done. As you asked
16:59:06 23 earlier whether or not I have been engaged in
16:59:08 24 the process of evaluating what she's done, I
16:59:11 25 have not done that. I wasn't retained for that

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16:59:13 2 purpose.

16:59:13 3 Q. I think I have no further
16:59:23 4 questions. Thank you for your time.

16:59:25 5 A. Thank you very much. I
16:59:26 6 appreciate it.

16:59:27 7 MR. GRAVANTE: I have no questions
16:59:28 8 at this time.

16:59:29 9 VIDEOGRAPHER: Here now marks the
16:59:33 10 end of tape 6 in the deposition of
16:59:36 11 Dr. Darrell L. Williams. The time is
16:59:38 12 4:59 p.m. We are now off the record.

16:59:38 13 (Time Noted: 4:59 p.m.)

14

15 _____
16 DARRELL L. WILLIAMS, Ph.D.

17

18 Subscribed and sworn to before me

19 this _____ day of _____, 2010.

20

21 _____

22

23

24

25

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3 ss:

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5 I wish to make the following changes, for
6 the following reasons:

7 PAGE LINE

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9 REASON: _____

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11 REASON: _____

12 _____ CHANGE: _____

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15 REASON: _____

16 _____ CHANGE: _____

17 REASON: _____

18 _____ CHANGE: _____

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